

Clearinghouse Rule 07-044

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Revisions to Rules Regarding the Information to be Included
in an Electric Utility Construction Application

1-AC-216

NOTICE OF HEARING

Hearing Date:	Thursday, June 21, 2007 at 9:30 a.m.
Hearing Location:	Public Service Commission, 610 North Whitney Way, Madison, WI

Comments Due: Friday, July 6, 2007 – Noon	Address Comments To: Sandra J. Paske, Secretary to the Commission Public Service Commission P.O. Box 7854 Madison, WI 53707-7854 FAX (608) 266-3957
FAX Due: Thursday, July 5, 2007 – Noon	

The Public Service Commission of Wisconsin proposes an order to renumber PSC 112.06 (1); renumber and amend PSC 111.53 (2) (b) 1.; amend PSC 111.51 (2) (intro.) and (b), 111.55(10) (intro.), and 112.02(1); repeal and recreate PSC 111.53 (2) (b) 2.; and create PSC 111.01(3g) and (3r), 111.51 (4), 111.53 (1) (em) and (2) (b) 1. and 3., 111.55 (10) (q) and note, 111.56, Subchapter VIII, 112.06 (1), 112.073 and 112.075 regarding revisions to rules as a result of 2003 Wisconsin Act 89.

**ANALYSIS PREPARED BY THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

The analysis is set forth as Attachment A. A copy of this entire notice may be accessed from the electronic regulatory filing portion of the Commission's website (psc.wi.gov).

TEXT OF PROPOSED RULE

The text of the proposed rule is set forth as Attachment B. A copy of this entire notice may be accessed from the electronic regulatory filing portion of the Commission's website (psc.wi.gov).

INITIAL REGULATORY FLEXIBILITY ANALYSIS

This rulemaking does not affect small businesses.

FISCAL ESTIMATE

This rulemaking will no have any fiscal effect and will not have a significant effect on the private sector. Fiscal information is included as Attachment C.

NOTICE OF HEARING

NOTICE IS GIVEN that pursuant to s. 227.16(2)(b), Stats., the Commission will hold a public hearing on these proposed rule changes in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, on Thursday, June 21, 2007 at 9:30 a.m. This building is accessible to people in wheelchairs through the Whitney Way (lobby) entrance. Handicapped parking is available on the south side of the building.

WRITTEN COMMENTS

Any person may submit written comments on these proposed rules. The hearing record will be open for written comments from the public, effective immediately, and until Friday, July 6, 2007 at noon (Thursday, July 5, 2007 at noon, if filed by fax). All written comments must include a reference on the filing to docket 1-AC-216. File by one mode only.

Industry: File comments using the Electronic Regulatory Filing system. This may be accessed from the Commission's website, <http://psc.wi.gov>.

Members of the Public:

If filing electronically: Use the Public Comments system or the Electronic Regulatory Filing system. Both of these may be accessed from the Commission's website (psc.wi.gov).

If filing by mail, courier, or hand delivery: Address as shown in the box on page 1.

If filing by fax: Send fax comments to (608) 266-3957. Fax filing cover sheet **MUST** state "Official Filing," the docket number 1-AC-216, and the number of pages (limited to 25 pages for fax comments).

CONTACT PERSON

Questions regarding this matter should be directed to Terri Kosobucki, Docket Coordinator at (608) 267-3595 or terri.kosobucki@psc.state.wi.us. Media questions should be directed to Linda Barth, Director of Governmental and Public Affairs at (608) 266-9600.

Docket 1-AC-216

Hearing or speech-impaired individuals may also use the Commission's TTY number, if calling from Wisconsin (800) 251-8345, if calling from outside Wisconsin (608) 267-1479.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to get this document in a different format should contact the Docket Coordinator, as indicated in the previous paragraph, as soon as possible.

Dated at Madison, Wisconsin, May 9, 2007_____

By the Commission:

/s/ Sandra J. Paske

Sandra J. Paske
Secretary to the Commission

JMD:kcdg:\RULES\ACTIVE\1-AC-216\2 - Notice of hearing step\Notice of Hearing.doc

**ANAYSIS PREPARED BY THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Statutory authority: ss. 196.02(3), 196.025, 196.491 and 227.11(2), Stats.
Statute interpreted: ss. 196.491

A. Objective of the Rule

This rulemaking docket has been initiated to allow the Commission to revise provisions in Chapters PSC 111 and 112 as a result of statutory changes enacted in 2003 Wisconsin Act 89. Act 89 revised statutory provisions relating to utility construction projects and agency review of the applications for authority to proceed with utility construction projects.

C. Analysis of the Proposed Revisions

Act 89 directs the Commission to promulgate rules to specify information to be included in an application to construct a high-voltage transmission line that may be eligible for expedited review by the Commission. Act 89 also creates new priorities for siting electric transmission lines, and requires utilities to consider using brownfield sites to the extent practicable. Additionally, this rulemaking considers other revisions to rules relating to the application process to reflect Act 89 provisions. These revisions include information needed to conduct a joint environmental review with the Department of Natural Resources, various construction related terminology, allowing utilities to begin urgently necessary work in case of emergency, and the provision of complete construction applications to area clerks and libraries.

D. Comparison with Existing or Proposed Federal Regulations

The Commission is not aware of any federal regulations in this area.

E. Comparison with Similar Rules in Adjacent States.

Existing statutes require that, within ten days of an applicant filing an application for a project that requires a Certificate of Public Convenience and Necessity, the Commission send a copy of the application to the clerk in each municipality and town in which the proposed facility is located and to the main library in such county. The proposed rule change would specify that this mailing be done *after* the application is determined to be complete, in order to avoid sending multiple versions of the application or multiple supplements to the application. The state of Ohio also requires that applications for new transmission lines or generation facilities be sent to local officials and libraries in the affected area after the application is determined, by the Ohio Power Siting Board, to be complete and ready for review.

Wisconsin Act 89 included a requirement for a pre-application consultation between the applicants and Public Service Commission and Wisconsin Department of Natural Resources staff before filing applications under Wis. Stat. §§ 196.49 and 196.491. One of the proposed rule

changes acknowledges this requirement and provides guidance to the applicant about the scope of this consultation. Ohio's administrative rules also describe pre-application consultations between the applicants and the regulatory agencies.

Similar to some surrounding states (Minnesota, Iowa, Ohio), the current rules regarding applications for high-voltage transmission lines or large generating facilities state that applicants must file complete information for at least two proposed sites or routes. The Commission is proposing a rule change that would allow applicants, under certain circumstances, to submit fully developed information for only one site if the proposed generating project involves: modifying, rebuilding, replacing, or repowering an existing facility; using an existing brownfield site; or constructing a cogeneration facility located at the steam host's existing industrial plant. Also, Wisconsin Act 89 also provides for an expedited review process for electric transmission projects that involve adding conductors to existing structures if all related construction activity takes place within an existing transmission line right-of-way. The proposed rule changes describe the application information needed for an expedited review and limit the information requirements for filing to the proposed route the applicants plan to use. In Iowa, application requirements can be waived if it is determined that the public interest would not be adversely affected by a proposed project and in Ohio the requirement for fully developed information for an alternative site or route can be waived for good cause.

Wisconsin Act 89 established priority corridors that must be considered in routing new high-voltage transmission lines and specified that brownfield sites must be used to the extent practicable for new electric generating facilities. The Commission's proposed rule change would require that project applications must explain how applicants considered the siting priorities for new high-voltage transmission lines and brownfield sites for large generation facilities. The state of Iowa also has designated "priority corridors" for siting high-voltage transmission lines and requires project applicants that submit proposals that deviate from these corridors to provide an explanation of why use of the corridors is not practicable or reasonable.

The current rule for applications filed under Wis. Stat. § 196.49 contains a definition for the term "begin construction." Wis. Stat. §196.491 contains a slightly different definition for the term "commencement of construction." The proposed rules use the same definition for "begin construction" and "commencement of construction." This definition, which allows surveying or collection of geological data to ascertain foundation conditions or site suitability prior to project authorization, is similar to definitions for this term found in the rules of adjacent states, including Minnesota, Iowa, Michigan, and Ohio.

A proposed addition in Wis. Admin. Code § PSC 112.075 related to emergency work was requested by Wisconsin utilities to allow necessary work in a speedy manner when an emergency situation occurs. Without such a provision a utility would, strictly speaking, be in violation of rule if it responded to an emergency without going through the procedures outlined in the rule. A similar rule applies to Wisconsin natural gas and water utilities. The notification requirement would ensure that this process was applied only in true emergencies. Finally, a requirement for Public Service Commission notification about new construction staging areas and access roads not described in a project application was added to Wis. Admin. Code chs. PSC

111 and 112. This requirement provides clear direction to utilities during project construction and reduces the potential for adverse environmental impact. Language pertaining to the two topics, emergency work or establishment of construction staging areas, was not found in reviewing utility-related statutes or rules in surrounding states although the Commission is aware that California has an emergency work provision.

TEXT OF PROPOSED RULE

SECTION 1. PSC 111.01 (3g) and (3r) are created to read:

PSC 111.01 (3g) “Commencement of construction” means to make any physical modification to the site or physical modification to equipment at the site that would not be required if the proposed project was not approved, but does not include borings necessary to determine foundation conditions or other monitoring or surveying to establish background information related to site or environmental suitability.

(3r) “Department” means the department of natural resources.

SECTION 2. PSC 111.51 (2) (intro.) and (b) are amended to read:

PSC 111.51 (2) (intro.) **ACTIONS BEFORE FILING A CPCN APPLICATION.** ~~At least 60 days before~~ Before filing a CPCN application an engineering plan for a large electric generating facility or a detailed project plan for a high-voltage transmission line, as defined in s. 196.491 (3) (b), Stats., the applicant shall do all of the following:

(b) Consult with ~~commission staff to determine what~~ from the department and the commission on the scope of the proposed project, the alternatives that must be considered in the application, and additional information that will be required as part of the CPCN application.

SECTION 3. PSC 111.51 (4) is created to read:

PSC 111.51(4) **COMPLETENESS DETERMINATION AND DISTRIBUTION OF APPLICATION.** (a) The commission shall notify an applicant of whether its CPCN application is complete within 30 days of its filing. If the commission does not notify an applicant within 30 days then the application shall be considered complete. A utility may supplement and refile an incomplete CPCN application.

(b) 1. Within 10 days after the commission has found a CPCN application to be complete, it shall send a copy of the complete application to the clerk of each municipality and town in which the proposed facility is to be located and to the main public library in each county in which the proposed facility is to be located.

2. The commission may fulfill subd. 1. by directing the applicant to send copies of the complete application to the locations identified in subd. 1.

SECTION 4. PSC 111.53 (1) (em) is created to read:

PSC 111.53 (1) (em) Information demonstrating how brownfields, as defined in s. 560.13(1)(a), Stats., were considered as site alternatives.

1 **SECTION 5.** PSC 111.53 (2) (b) 1. is renumbered 111.53 (2) (b) (intro.) and amended to read:

2
3 PSC 111.53 (2) (b) (intro.) An application for a ~~co~~generation generation facility ~~may meet the~~
4 ~~requirement under~~ is exempt from sub. (1) (e) ~~by filing information on 2 sites that are both~~
5 ~~located at the steam host's existing industrial plant, if the cogeneration facility will be a~~
6 ~~qualifying facility under 18 CFR 292.205 and,~~ but shall contain all other application information
7 listed in sub. (1) if none of the needed infrastructure improvements would constitute a major
8 action significantly affecting the quality of the human environment under s. 1.11 (2) (c), Stats.,
9 and the application is for any of the following:

10
11
12 **SECTION 6.** PSC 111.53 (2) (b) 1. is created to read:

13
14 PSC 111.53 (2)(b) 1. A cogeneration facility located at the steam host's existing industrial plant,
15 if the cogeneration facility will be a qualifying facility under 18 CFR 292.205.

16
17
18 **SECTION 7.** PSC 111.53 (2) (b) 2. is repealed and recreated to read:

19
20 PSC 111.53 (2) (b) 2. Modifying, rebuilding, replacing or repowering, as defined under s. 79.005
21 (4), an existing generating facility at its current location.

22
23
24 **SECTION 8.** PSC 111.53 (2) (b) 3. is created to read:

25
26 PSC 111.53 (2) (b) 3. A generating facility proposed to be located on an existing brownfield site,
27 as defined in s. 560.13(1)(a), Stats.

28
29
30 **SECTION 9.** PSC 111.55 (10) (intro.) is amended to read:

31
32 PSC 111.55 (10) (intro.) ~~ALTERNATIVE~~ PROPOSED ROUTES. Except as otherwise
33 submitted under this section, ~~alternative proposed routes~~ and the pertinent factors considered in
34 choosing ~~alternatives~~ them, including engineering, economic, safety, reliability and
35 environmental considerations. All of the following information shall be filed for each of the
36 ~~alternative proposed~~ routes:

37
38
39 **SECTION 10.** PSC 111.55 (10) (q) and note are created to read:

40
41 PSC 111.55(10) (q) Information demonstrating how the transmission line siting priorities in s.
42 1.12(6), Stats., were considered.

43
44 **Note:** See s. PSC 111.71 concerning required notice about additional work areas such as staging areas.
45

1 **SECTION 11.** PSC 111.56 and note are created to read:

2

3 **PSC 111.56 Expedited review.** An applicant requesting expedited review of a high voltage
4 transmission line application under s. 196.491(3b), Stats., shall include all of the following in its
5 application:

6 (1) All the information required under s. PSC 111.55, except that the detailed information
7 required under s. PSC 111.55(10) is required only for the route the applicant proposes to
8 reconstruct.

9

10 (2) Information describing in detail why the application should receive expedited review.

11 **Note:** See s. PSC 111.71 concerning required notice about additional work areas such as staging areas.

12

13

14 **SECTION 12.** PSC 111 Subchapter VIII is created to read:

15

16 **Subchapter VIII – Pre-construction Notices**

17

18 **PSC 111.71 Notification of additional work areas.** After the commission has issued a CPCN
19 under s. 196.491, Stats., an electric utility shall, before establishing any construction area or
20 access road that were not identified and described in the project application, notify the
21 commission of the location of the construction area or access road, and demonstrate that the use
22 of the construction area or access road will not affect any threatened or endangered species,
23 historic resources, wetlands, waterways or other sensitive resources. A construction area includes
24 a staging area for receiving and storing materials and equipment required for construction.

25

26

27 **SECTION 13.** PSC 112.02 (1) is amended to read:

28

29 PSC 112.02 (1) “Begin construction” means to make any physical modification to the site or
30 physical modification to equipment at the site which would not be required if the proposed
31 project ~~were~~ was not approved, ~~but does not include borings necessary to determine foundation~~
32 conditions or other monitoring or surveying to establish background information related to site or
33 environmental suitability.

34

35

36 **SECTION 14.** PSC 112.06(1) is renumbered 112.06(1m).

37

38

39 **SECTION 15.** PSC 112.06(1) is created to read:

40

41 **(1) PRIOR TO FILING AN APPLICATION.** Before filing an application for commission authorization
42 under s. 196.49, Stats., the applicant shall do all of the following:

43

44 (a) Notify the department and the commission of its intent to seek commission authorization.

45

1 (b) Consult with staff from the department and the commission on the scope of the proposed
2 project, the alternatives that must be considered in the application and additional information that
3 will be required as part of the commission authorization application.
4

5
6 **SECTION 16.** PSC 112.073 and 112.075 are created to read:
7

8 **PSC 112.073 Notification of additional work areas.** After the commission has issued an
9 authorization under s. 196.49, Stats., an electric utility shall, before establishing any construction
10 area or access road that was not identified and described in the project application, notify the
11 commission of the location of the construction area or access road, and demonstrate that the use
12 of the construction area or access road will not affect any threatened or endangered species,
13 historic resources, wetlands, waterways or other sensitive resources. A construction area includes
14 a staging area for receiving and storing materials and equipment required for construction.
15

16 **PSC 112.075 Emergency work.** In case of emergency, an electric utility may begin necessary
17 work without complying with ss. PSC 112.06 and 112.07. The utility shall do all of the
18 following:

- 19 (1) Notify the commission of its actions within 48 hours of commencement of the work.
20 (2) Furnish the commission the information required under s. PSC 112.06 within 30 days of
21 commencement of the work.

<p>2007 Session</p> <p>LRB or Bill No./Adm. Rule No. Ch. PSC 111 &112 Docket 1-AC-216</p> <p>Amendment No. if Applicable</p>				
<p>FISCAL ESTIMATE DOA-2048 N(R10/96)</p>	<p><input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED</p> <p><input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL</p>			
<p>Subject Create Rules to Make Changes Necessitated by WI Act 89 Laws of 2003.</p>				
<p>Fiscal Effect</p> <p>State: <input checked="" type="checkbox"/> No State Fiscal Effect</p> <p>Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> <p><input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues</p> <p><input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues</p> <p><input type="checkbox"/> Create New Appropriation</p> </td> <td style="width: 50%; border: none;"> <p><input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Decrease Costs</p> </td> </tr> </table>		<p><input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues</p> <p><input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues</p> <p><input type="checkbox"/> Create New Appropriation</p>	<p><input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Decrease Costs</p>	
<p><input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues</p> <p><input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues</p> <p><input type="checkbox"/> Create New Appropriation</p>	<p><input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Decrease Costs</p>			
<p>Local: <input checked="" type="checkbox"/> No local government costs</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; border: none;"> <p>1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> </td> <td style="width: 33%; border: none;"> <p>3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> </td> <td style="width: 33%; border: none;"> <p>5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts</p> </td> </tr> </table>		<p>1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p>	<p>3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p>	<p>5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts</p>
<p>1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p>	<p>3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p>	<p>5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts</p>		
<p>Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>Affected Ch. 20 Appropriations 20.155 (1) (g)</p>			
<p>Assumptions Used in Arriving at Fiscal Estimate</p> <p>Act 89 directs the Commission to promulgate rules to specify the information to be included in an application to construct a high-voltage transmission line that may be eligible for expedited review by the Commission. Act 89 also creates new priorities for siting electric transmission lines, and requires utilities to consider using brownfield sites to the extent practicable. Additionally, this rulemaking considers other revisions to rules relating to the application process to reflect Act 89 provisions. These revisions include information needed to conduct a joint environmental review with the Department of Natural Resources, various construction related terminology, allowing utilities to begin urgently necessary work in case of emergency, and the provision of complete construction applications to area clerks and libraries.</p> <p>The proposed rules will not increase or decrease the costs for state or local governments.</p>				
<p>Long-Range Fiscal Implications NONE</p>				
<p>Agency/Prepared by: (Name & Phone No.) Gordon Grant 267-9086</p>	<p>Authorized Signature/Telephone No. Gordon Grant</p>	<p>Date 2/16/2007</p>		